IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIRST DAY OF DECEMBER
TWO THOUSAND AND SIX

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE D.APPA RAO

WRIT PETITION No.36032 OF 1998

Between:

The Associated Cement Company Ltd.,
Manchiryal, Adilabad District,
Rep. by Y.Raj Kumar.

..... PETITIONER

AND

The Government of A.P.
rep. by its Secretary,
Municipal Administration
Secretariat, Hyderabad, and another.

....RESPONDENTS

THE HON'BLE MR JUSTICE
J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE
D.APPA RAO

WRIT PETITION No.36032 OF 1998

O R D E R
(Per Sri Justice J.Chelameswar)

This writ petition is filed with a prayer as follows:

> **"… Hon'ble Court may be pleased to issue an order, direction or a Writ, particularly one in the nature of Writ of Certiorari after calling for the records from the Mancherial Municipality, Adilabad and quash the order vide No.3081/A1/98, dt.14.11.98 and pass …"**

The petitioner is a Limited Company having its registered office at Bombay with various manufacturing units throughout the country, one among them is situated in Andhra Pradesh within the limits of the second respondent Municipality, carrying on the activity of manufacturing cement. It is stated in the affidavit filed in support of the writ petition that there is a township near the above manufacturing unit with a population of 2,000 persons i.e. employees of the petitioner and their dependants.

The second respondent issued a notice dated 14.11.1998, the relevant portion of which reads as follows:

> **"The General Manager, Associated Cement Company, Mancherial, Block No.(2) is hereby informed that, in exercise of the powers vested**

under rule 22 of Taxation and Finance Rules 1965, the Regional Director-Cum-Appellate Commissioner of Municipal Administration, Warangal after due consideration, the Property tax of the premises bearing Block No.2(A.C.C. Factory Premises) has been reduced to Rs.2,74,644-00 for previous amount of Rs.3,35,035-00. As such the payment half yearly tax is fixed at Rs.2,74,644-00.

Therefore in the light of the order of the High Court of Andhra Pradesh in W.P.No.8758/98 and as per the order in appeal of the Appellate Commissioner the amount deposited by you in the State Bank of Hyderabad is to be adjusted towards the payment of property tax of the above premises.

As such you are requested to advice the Bank authorities of State Bank of Hyderabad to release the amount of Rs.11,06,066-00 in favour of Commissioner, Mancherial Municipality by adjustment of property tax for the period from 1-10-1993 to 31-3-1999."

Challenging the said notice, the present writ petition is filed.

The background facts leading to issuance of the abovementioned notice are as follows and the said facts have been gathered from an earlier judgment of this Court in W.P.No.8758 of 1998, which was disposed of by a Division Bench by an order dated 22.04.1998.

It appears from the above judgment that the second respondent raised property tax demands against the petitioner for the period commencing from 01.10.993 and ending with 31.03.1998. Disputing the liability to pay such an amount of tax, it appears the petitioner carried the matter in appeal, though it is doubtful under which provision of law such appeal can be preferred. The appellate authority rejected the appeal on the ground that the pre-condition prescribed by Rule-25(ii) of A.P. Municipalities Rules was not satisfied. Consequent upon the rejection of the said appeal, the second respondent demanded payment of tax. Questioning the said demand, the petitioner had earlier approached this Court by way Writ Petition No.8758 of 1998, referred to earlier. Though the petitioner raised various pleas in the writ petition, the Division Bench did not examine the same on the ground that as

there was an appeal remedy available, all such questions should be decided by the appellate authority and the Bench further directed the petitioner to deposit certain amount with the Bank with a condition that the amount shall lie in deposit during the pendency of the appeal and further directed that upon such deposit, the appellate authority shall consider the appeal of the petitioner on merits in accordance with law and depending upon the outcome of the appeal, the amount deposited pursuant to the order of this Court shall be appropriated either by the respondents or by the petitioner. The relevant portion of the order of the Division Bench reads as follows:

> **"… As the remedy of appeal has already been availed of by the petitioner, we do not propose to go into the merits. As the deposit is a pre-condition for hearing of the appeal, and there is no ground to dispense with the deposit, we consider it just and proper to dispose of this writ petition in the following manner:**
>
> **The petitioner will deposit Rs.18,06,066/- in a Bank for a period of one year to the credit of the Mancherial Municipality or the authorized officer thereof, within a period of two weeks after the letters and forms are furnished by the Municipal Commissioner for opening the bank account. Neither party should withdraw the amount pending disposal of the appeal by the Regional Director-cum-Appellate Commissioner of Municipal Administration, Warangal. The withdrawal of amount by either party shall depend upon the result of the appeal. On depositing the amount with the Bank, the petitioner's appeal shall be disposed of on merits."**

Admittedly, the petitioner deposited the amount as directed by the Division Bench and the Appellate Commissioner, therefore heard the appeal of the petitioner and disposed of the same on 20th August, 1998. The substance of the appellate order is that while the petitioner was assessed to tax by the respondent-Municipality at Rs.3,35,035/- per half year, the appellate authority came to the conclusion that the petitioner is liable to pay only an amount of Rs.2,74,644/- per half year. After the disposal of the appeal, the second respondent issued the impugned demand notice dated 14.11.1998.

Learned counsel for the petitioner argued that the levy of various items of tax falling under various clauses of Section-85 of the A.P. Municipalities Act is illegal for various reasons, which we do not propose to examine for the reason that the prayer in the writ petition is limited as extracted above. If the petitioner has any grievance against the levy, as modified by the above-referred order, it ought to have challenged the same before the appropriate Forum. In the absence of any challenge against the appellate order referred to above, the various submissions raised by the petitioner cannot be entertained in the present writ petition. The impugned notice, in our view, is a simple consequential notice of the appellate order coupled with the arrangement made by this Court while disposing of the earlier writ petition, referred to above.

In the circumstances, we do not see any merits in the writ petition and the same is, therefore, dismissed.

JUSTICE J.CHELAMESWAR

JUSTICE D.APPA RAO

21st DECEMBER, 2006
PGS

THE HON'BLE MR JUSTICE
J.CHELAMESWAR
AND
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WRIT PETITION No.36032 OF 1998
(Per Sri Justice J.Chelameswar)

21ST DECEMBER, 2006